

## SPECIFIC FEDERAL EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES (23 CFR 230, Subpart A, Appendix A, FAPG June 6, 1996)

1. General. a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required contract Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b. The contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. Equal Employment Opportunity Policy. The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote their full realization of equal employment through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

3. Equal Employment Opportunity Officer. The contractor will designate and make known to State highway agency contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. Dissemination of Policy. a. All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

(1). Periodic meetings of supervisory and personnel office staff will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2). All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(3). All personnel who are engaged in direct recruitment for the project will be instructed by the EEO officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b. In order to make the contractor's equal employment policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1). Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2). The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Recruitment. a. When advertising for employees, the contractor will include in all advertisements for employees the notation "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such

identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where the implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. Personnel Actions. Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all his avenues of appeal.

7. Training and Promotion. a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full

use of training programs, i.e. apprenticeship, on-the-job training programs for the geographical area of contract performance.

Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The Contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. Unions. If a contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group members and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the State highway agency.

9. Subcontracting. The contractor will use his best efforts to solicit bids from and to minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. Records and Reports: a. The contractor shall keep such records as necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and nonminority group members and women employed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractor's who rely in whole or in part on unions as a source of their work force),

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

(4) The progress and efforts being made in securing the services of minority group subcontractors with meaningful minority and female representation among their employees.

b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

c. The contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR-1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.

**STANDARD FEDERAL AND STATE EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS  
(41 CFR 60-4.3 and Minnesota Statute 363.073)**

\* *Unless noted, the following apply to both Federal/federally assisted projects and State/state assisted projects. Item 3 applies to Federal/federally assisted projects only.*

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer Identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
  - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

- 2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 (\$50,000 for State projects) the provisions of these specifications and the Notice which contains the applicable goals for minority and women participation and which is set forth in the solicitations from which this contract resulted.
- 3. If the Contractor is participating (pursuant to 41 CFR 60-4, 5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work on the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate

their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7(a) to (p) of these specifications (itemized as 4[a] to [o], Minnesota Rules 5000.3535). The goals, set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minorities and utilization the Contractor should (shall, for State or state assisted projects) reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor shall make substantially uniform progress toward its goals in each craft during the period specified. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Federal goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any office of Federal Contract Compliance programs or from Federal procurement contracting officers. State goals are published periodically in the State Register in notice form, and may be obtained from the Minnesota Department of Human Rights or the Minnesota Department of Transportation's EEO Contract Management Office. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement nor the failure by a union, with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications and Executive Order 11246 and its associated rules and regulations for Federal or federally assisted projects, and Minnesota Statutes, Section 363.073 of the Minnesota Human Rights Act, or the rules adopted under the Act for State or state assisted projects.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained according to training programs approved by the Minnesota Department of Human Rights, the Minnesota Department of Labor and Industry, or the United States Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications must be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following (referred to in Minnesota Rules 5000.3535 as items 4(a) to (o):

- (a) Ensure and maintain, or for State or state assisted projects make a good faith effort to maintain, a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the Contractor's employees are assigned to work. For Federal or federally assisted projects, the Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or women individuals working at such sites or in such facilities.
- (b) Establish and maintain a current list of minority and women recruitment sources, provide written notification to minority and women recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- (c) Maintain a current file of the names, addresses, and telephone numbers of each minority and women off-the-street applicant and minority or women referral from a union, a recruitment source, or community organization and of what action was taken with respect to each individual. If the individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor along with whatever additional actions the Contractor may have taken.
- (d) Provide immediate written notification to the commissioner of the Minnesota Department of Human Rights for State or state assisted projects, or the director of the Office of Federal Contract Compliance for Federal or federally assisted projects, when the union, or unions with which the Contractor has a collective bargaining agreement, has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (e) Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the State of Minnesota for State or state assisted projects or the Department of Labor, for Federal or federally assisted projects. The Contractor shall provide notice of these programs to the sources compiled under (b).
- (f) Disseminate the Contractor's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its equal employment opportunity obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual

report, etc.; by specific review of the policy with all management personnel and with all minority and women employees at least once a year; and by posting the company equal employment opportunity policy on bulletin boards accessible to all employees at each location where construction work is performed.

- (g) Review, at least annually, the company's equal employment opportunity policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions; including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the first day of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (h) Disseminate the Contractor's equal employment opportunity policy externally by including it in any advertising in the news media, specifically including minority and women news media, and providing written notification to and discussing the Contractor's equal employment opportunity policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- (i) Direct its recruitment efforts, both oral and written, to minority, women, and community organizations; to schools with minority and women students; and to minority and women recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (j) Encourage present minority and women employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and women youth, both on the site and in other areas of a Contractor's work force.
- (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3. (This requirement applies only to Federal and federally assisted projects.)
- (l) Conduct, at least annually, an inventory and evaluation at least of all minority and women personnel for promotional opportunities; and encourage these employees to seek or to prepare for, through appropriate training, such opportunities. (This is Item 4(k) in Minnesota Rules.)
- (m) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the equal employment opportunity policy and the Contractor's obligations under

these specifications are being carried out. (This is item 4(l) in Minnesota Rules.)

- (n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes. (This is item 4(m) in Minnesota Rules.)
  - (o) Document and maintain a record of all solicitations or offers for subcontracts from minority and women construction contractors and suppliers, including circulation of solicitations to minority and women contractor associations and other business associations. (This is item 4(n) in Minnesota Rules.)
  - (p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment opportunity policies and affirmative action obligations. (This is item 4(o) in Minnesota Rules.)
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7(a) to (p) for Federal or federally assisted projects, and 4(a)-(o) for State or state assisted projects). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7(a) to (p) or 4(a) to (o) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and women work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order for Federal or federally assisted projects, or Minnesota Rules for State or state assisted projects, if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order or Minnesota Rules part 5000.3520 if a specific minority group is under-utilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, creed, religion, sex, or national origin. Minnesota Statutes 363.073, part 5000.3535 (Subp. 7) also prohibits discrimination with regard to marital status, status with regard to public assistance, disability, age, or sexual orientation.
11. The Contractor shall not enter into any subcontract with any person or firm debarred

from government contracts under the federal Executive Order 11246 or a local human rights ordinance, or whose certificate of compliance has been suspended or revoked pursuant to Minnesota Statutes, Section 363.073.

12. The Contractor shall carry out such sanctions for violation of these specifications and of the equal opportunity clause, including suspension, termination, and cancellation of existing contracts as may be imposed or ordered pursuant to Minnesota Statutes, Section 363.073, and its implementing rules for State or state assisted projects, or Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs for Federal or federally assisted projects. Any contractor who fails to carry out such sanctions shall be in violation of these specifications and Minnesota Statutes, Section 363.073, or Executive Order 11246 as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications (paragraph 4 in Minnesota Rules 5000.3535), so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these Specifications or Minnesota Statutes, Section 363.073 and its implementing rules, or Executive Order 11246 and its regulations, the commissioner or the director shall proceed in accordance with Minnesota Rules part 5000.3570 for State or state assisted projects, or 41 CFR 60-4.8 for Federal or federally assisted projects.
14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Minnesota Department of Human Rights or the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (for example, mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing provided in this part shall be construed as a limitation upon the application of other state or federal laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.



**EQUAL OPPORTUNITY CLAUSE**  
**(41 CFR Part 60-1.4 b, 7-1-96 Edition)**

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Highway Agency (SHA) setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246, Equal Employment Opportunity, dated September 24, 1965, and of the rules, regulations (41 CFR Part 60), and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 and by rules, regulations, and orders of the Secretary of Labor, pursuant thereto, and will permit access to its books, records, and accounts by the Federal Highway Administration (FHWA) and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract, or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965,

and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraph (1) through (7) in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor, SHA, or the Federal Highway Administration (FHWA) may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event a contractor becomes a party to litigation by a subcontractor or vendor as a result of such direction, the contractor may request the SHA to enter into such litigation to protect the interest of the State. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

## Minority and Women Employment Goals

County	Federal Goals		State Goals		
	Minority Goal	Women Goal	Total Minority Goal (or)		Women Goal
			Skilled	Unskilled	
Aitkin	2.2%	6.9%	3.9%		9.4%
Anoka	2.9%	6.9%	6.7%	7.3%	9.4%
Becker	0.7%	6.9%	2.5%		9.4%
Beltrami	2.0%	6.9%	10.2%		9.4%
Benton	0.5%	6.9%	1.4%		9.4%
Big Stone	2.2%	6.9%	2.2%		9.4%
Blue Earth	2.2%	6.9%	2.2%		9.4%
Brown	2.2%	6.9%	2.2%		9.4%
Carlton	1.2%	6.9%	3.9%		9.4%
Carver	2.9%	6.9%	6.7%	7.3%	9.4%
Cass	2.2%	6.9%	2.6%		9.4%
Chippewa	2.2%	6.9%	2.2%		9.4%
Chisago	2.9%	6.9%	2.9%		9.4%
Clay	0.7%	6.9%	2.5%		9.4%
Clearwater	2.0%	6.9%	10.2%		9.4%
Cook	1.2%	6.9%	3.9%		9.4%
Cottonwood	0.8%	6.9%	1.8%		9.4%
Crow Wing	2.2%	6.9%	2.6%		9.4%
Dakota	2.9%	6.9%	6.7%	7.3%	9.4%
Dodge	0.9%	6.9%	1.9%		9.4%
Douglas	2.2%	6.9%	2.5%		9.4%
Faribault	2.2%	6.9%	2.2%		9.4%
Fillmore	0.9%	6.9%	1.9%		9.4%
Freeborn	0.9%	6.9%	1.9%		9.4%
Goodhue	2.2%	6.9%	2.2%		9.4%
Grant	2.2%	6.9%	2.5%		9.4%
Hennepin	2.9%	6.9%	8.6% but in Mpls: 17.7%	9.5% but in Mpls: 19.8%	9.4%
Houston	0.6%	6.9%	1.9%		9.4%
Hubbard	2.0%	6.9%	10.2%		9.4%

Minnesota Department of Transportation  
EEO Contract Management Office

County	Federal Goals		State Goals		
	Minority Goal	Women Goal	Total Minority Goal (or)		Women Goal
			Skilled	Unskilled	
Isanti	2.2%	6.9%	2.2%		9.4%
Itasca	1.2%	6.9%	3.9%		9.4%
Jackson	0.8%	6.9%	1.8%		9.4%
Kanabec	2.2%	6.9%	2.2%		9.4%
Kandiyohi	2.2%	6.9%	2.2%		9.4%
Kittson	2.0%	6.9%	2.7%		9.4%
Koochiching	1.2%	6.9%	3.9%		9.4%
Lac Qui Parle	2.2%	6.9%	2.2%		9.4%
Lake	1.2%	6.9%	3.9%		9.4%
Lake of the Woods	2.0%	6.9%	10.2%		9.4%
Le Sueur	2.2%	6.9%	2.2%		9.4%
Lincoln	0.8%	6.9%	1.8%		9.4%
Lyon	0.8%	6.9%	1.8%		9.4%
Mahnomen	2.0%	6.9%	10.2%		9.4%
Marshall	2.0%	6.9%	2.7%		9.4%
Martin	2.2%	6.9%	2.2%		9.4%
McLeod	2.2%	6.9%	2.2%		9.4%
Meeker	2.2%	6.9%	2.2%		9.4%
Mille Lacs	2.2%	6.9%	2.2%		9.4%
Morrison	2.2%	6.9%	2.6%		9.4%
Mower	0.9%	6.9%	1.9%		9.4%
Murray	0.8%	6.9%	1.8%		9.4%
Nicollet	2.2%	6.9%	2.2%		9.4%
Nobles	0.8%	6.9%	1.8%		9.4%
Norman	2.0%	6.9%	2.7%		9.4%
Olmsted	1.4%	6.9%	1.9%		9.4%
Otter Tail	2.2%	6.9%	2.5%		9.4%
Pennington	2.0%	6.9%	2.7%		9.4%
Pine	2.2%	6.9%	2.2%		9.4%
Pipestone	0.8%	6.9%	1.8%		9.4%
Polk	1.2%	6.9%	2.7%		9.4%
Pope	2.2%	6.9%	2.5%		9.4%

Minnesota Department of Transportation  
EEO Contract Management Office

Special Provisions  
Revised 4/97

County	Federal Goals		State Goals		
	Minority Goal	Women Goal	Total Minority Goal (or)		Women Goal
			Skilled	Unskilled	
Ramsey	2.9%	6.9%	8.1% <i>but in St Paul: 14.3%</i>	9.0% <i>but in St Paul: 15.4%</i>	9.4%
Red Lake	2.0%	6.9%	2.7%		9.4%
Redwood	0.8%	6.9%	1.8%		9.4%
Renville	2.2%	6.9%	2.2%		9.4%
Rice	2.2%	6.9%	2.2%		9.4%
Rock	0.8%	6.9%	1.8%		9.4%
Roseau	2.0%	6.9%	2.7%		9.4%
Scott	2.9%	6.9%	6.7%	7.3%	9.4%
Sherburne	0.5%	6.9%	1.4%		9.4%
Sibley	2.2%	6.9%	2.2%		9.4%
St. Louis	1.0%	6.9%	3.9%		9.4%
Stearns	0.5%	6.9%	1.4%		9.4%
Steele	0.9%	6.9%	1.9%		9.4%
Stevens	2.2%	6.9%	2.5%		9.4%
Swift	2.2%	6.9%	2.2%		9.4%
Todd	2.2%	6.9%	2.6%		9.4%
Traverse	2.2%	6.9%	2.5%		9.4%
Wabasha	0.9%	6.9%	1.9%		9.4%
Wadena	2.2%	6.9%	2.6%		9.4%
Waseca	2.2%	6.9%	2.2%		9.4%
Washington	2.9%	6.9%	6.7%	7.3%	9.4%
Watsonwan	2.2%	6.9%	2.2%		9.4%
Wilkin	0.7%	6.9%	2.5%		9.4%
Winona	0.6%	6.9%	1.9%		9.4%
Wright	2.9%	6.9%	2.9%		9.4%
Yellow Medicine	2.2%	6.9%	2.2%		9.4%

## **NOTICE TO ALL PRIME AND SUB-CONTRACTORS**

### **Reporting Requirements**

1. In order for the Minnesota Department of Transportation to monitor the Contractor's compliance with Federal Statutes 23 USC 140 and 23 CFR 230, and Minnesota Statute 363.073, all prime contractors and subcontractors are required to complete a Mn/DOT Monthly Employment Compliance Report (Form EEO-13, sample copy at EEO Pages 25-26. Instructions for completion are listed on the back of the form.) All prime contractors are also required to complete a Summary of Employment Activity (Form EEO-12, sample copy at EEO Pages 23-24).

The prime contractor must collect a Monthly Employment Compliance Report from each subcontractor who performed work during the month, and complete a Monthly Employment Compliance Report on its own work force each month it performs work on the project. The prime contractor must compile the monthly reports and enter totals for the entire project on Form EEO-12, Summary of Employment Activity Report. The prime contractor submits all of the EEO-13 forms and one EEO 12 form to the Mn/DOT Project Engineer, by the 15th of the subsequent month.

Failure to submit the required reports in the allowable time frame will be cause for the imposition of contract sanctions. The prime contractor is also responsible for sending copies of these reports to the Minnesota Department of Human Rights - Compliance Unit, Army Corps of Engineers Centre, 190 E 5th Street, Suite 700, St. Paul, MN 55101.

It is the intent of Mn/DOT to implement monitoring measures on each project to ensure that each prime contractor and subcontractor is promoting the full realization of equal employment opportunities. Any project that is found to be in non-compliance with the established goals for that project may be scheduled for an in depth on-site contract compliance review. During the scheduled on-site review, the Contractor will be required to provide to Mn/DOT documentation of its "good faith efforts" as shown in EEO Pages 10-13, at 7 a-p of this contract.

2. The Economic Disadvantaged Employee Incentive Report (Form EEO-14, sample copy at EEO Page 28) is used only with State projects (designated by State Project (S.P.) numbers) for claiming incentive reimbursement on projects which have exceeded their state goals for minority and women employment. A completed form should be mailed to Ernest L. Lloyd, Director, EEO Contract Management Office, Minnesota Department of Transportation, M.S. 170, 395 John Ireland Boulevard, St. Paul, Mn 55155, at the conclusion of the project.

3. If a Federally funded project requires On-the-Job-Training (OJT) participation, information is provided in the contract and can be located by referring to the Table of Contents for Division S. (OJT is also listed as a bid line item under Trainees.) When a contract requires OJT participation, the Prime Contractor shall submit a training plan to the Project Engineer at the preconstruction conference, and shall supply a copy to the Contract Compliance Specialist (CCS) assigned to the project. The training plan shall include the job classification titles of trainees, planned training activities and the approximate start date of trainees.
4. When a Contractor selects a trainee applicant for OJT, the Contractor completes an On The Job Training Program-Trainee Assignment form (sample copy at EEO Page 29) and submits it to the CCS assigned to the project for approval. The CCS will notify the Contractor and the Project Engineer when the applicant is approved.
5. Hours of work performed by OJT employees shall be documented on a monthly basis on the Certification of On-The-Job Training Hours form, (Mn/DOT Form No. 21860, sample copy at EEO Page 30). The Contractor shall submit the original and one copy to the Project Engineer, and one copy to the CCS assigned to the project.

\*\*\*\*\*

Do not remove forms from this contract. Please duplicate forms from the copies in this contract, or the Mn/DOT EEO Contract Management Office will provide these forms upon request. Please call the EEO Contract Management Office, (612) 297-1376.

## **APPROPRIATE WORK PLACE BEHAVIOR ON Mn/DOT CONSTRUCTION PROJECTS UTILIZING STATE FUNDS**

It is the Minnesota Department of Transportation's (Mn/DOT's) policy to provide a workplace free from violence, threats of violence, harassment and discrimination. Mn/DOT has established a policy of zero tolerance for violence in the workplace. Contractors who perform work on Mn/DOT construction projects, or local government entities or public agencies utilizing state funds on highway construction projects, shall maintain a workplace free from violence, harassment and discrimination (See definitions, below).

### **Definitions:**

1. **Violence** is the threatened or actual use of force which results in or has a high likelihood of causing fear, injury, suffering or death. Employees are prohibited from taking reprisal against anyone who reports a violent act or threat.

2. **Harassment** is the conduct of one employee (toward another employee) which has the purpose or effect of 1) unreasonably interfering with the employee's work performance, and/or 2) creating an intimidating, hostile or offensive work environment. Harassment is not legitimate job-related efforts of supervisor to direct/evaluate an employee or to have an employee improve work performance.

A. **Unlawful discriminatory harassment** is harassment which is based on these characteristics: race, color, creed, religion, national origin, sex, disability, age, marital status, status with regard to public assistance or sexual orientation. Managers, supervisors and employees shall not take disciplinary or retaliatory action against employees who make complaints of sexual harassment.

**Sexual harassment** is unwelcome sexual advances, requests for sexual favors, or sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature, when submission to that conduct or communication is 1) made a term or condition, either explicitly or implicitly, of obtaining employment; or 2) is used as a factor in decisions affecting an individual's employment; or 3) when that conduct or communication has the purpose or effect of substantially interfering with an individual's employment or creating an intimidating, hostile or offensive work environment, and the employer knows or should have known of the existence of the harassment and fails to take timely and appropriate action. Examples include but are not limited to insulting or degrading sexual remarks or conduct; threats, demands or suggestions that status is contingent upon toleration or acquiescence to sexual advances; displaying in the workplace sexually suggestive objects, publications or pictures, or retaliation against employees for complaining about the behavior cited above or similar behaviors.

B. **General harassment** is harassment which is not based on the above characteristics. Examples may include, but are not limited to: physically intimidating behavior and/or threats of violence; use of profanity (swearing), vulgarity; ridiculing, taunting, belittling or humiliating another person; inappropriate assignments of work or benefits; derogatory name calling.

3. **Discrimination** includes actions which cause a person, solely because of race, color, creed, religion, national origin, sex, disability, age, marital status, status with regard to public assistance or sexual orientation to be subject to unequal treatment.

Prime Contractors who work on Mn/DOT projects shall ensure that their managers, supervisors, foremen/women and employees are familiar with Mn/DOT's policy on appropriate work place behavior; and shall ensure that their subcontractors are familiar with this policy. Managers, supervisors and foremen/women will respond to, document, and take appropriate action in response to all reports of violence, threats of violence, harassment or discrimination. Failure to comply with this policy may result in cancellation, termination or suspension of contracts or subcontracts currently held and debarment from further such contracts or subcontracts as provided by statute. If you need additional information or training regarding this policy, please contact the EEO Contract Management Office at (612) 297-1376.



Minnesota Department of Transportation  
EEO Contract Management Office

## SUMMARY OF EMPLOYMENT ACTIVITY

as of \_\_\_\_\_, 19 \_\_\_\_.  
(month)

Prime Contractor: \_\_\_\_\_ S.P./S.A.P.#: \_\_\_\_\_ County: \_\_\_\_\_

<b>Totals</b>		<b>Percentages</b>	
1.	Total dollar amount of contract: \$ _____	1.a.	Percent of completion: _____ %
2.*	Total number of workforce hours to date: _____		
	Total Skilled Hours: _____		
	Total Unskilled Hours: _____		
3.*	Total number of minority workforce hours to date: _____	3.a.	Percent of total: _____ %
	Skilled: _____		Percent of total skilled: _____ %
	Unskilled: _____		Percent of total unskilled: _____ %
4.	Total number of women workforce hours to date: _____	4.a.	Percent of total: _____ %
5.**	Economic Disadvantaged Employee incentive hours: _____		

Prepared by: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

\* Skilled/unskilled breakdown only required if any part of project is constructed in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington counties.

\*\* See EEO-14

## SUBCONTRACTOR REPORTING LIST

[illegible]

\* Please submit the missing reports directly to the EEO Contract Management Office with a copy to the Mn/DOT Project Engineer. If you need assistance in attaining compliance with the reporting requirements by your subcontractors, contact the Mn/DOT Project Engineer, or the EEO Contract Management Office at (612) 297-1376.

MINNESOTA DEPARTMENT OF TRANSPORTATION  
EEO CONTRACT MANAGEMENT OFFICE

## MONTHLY EMPLOYMENT COMPLIANCE REPORT

EEO-13

1. S.P. No. A.P. No: \_\_\_\_\_  
County or City: \_\_\_\_\_

2. Month \_\_\_\_\_, 19\_\_\_\_

7. CONTRACT GOALS

MINNESOTA GOALS	% Obtained
_____ % Minority (Or)	_____ %
_____ % Skilled	_____ %
_____ % Unskilled	_____ %
9.4 % Women	_____ %

3. Name and Address of Contractor: \_\_\_\_\_

4. ☐ Prime Contractor  
☐ Subcontractor

5. Dollar Amount of Contract \_\_\_\_\_

6. Project Completion % \_\_\_\_\_

FEDERAL GOALS

_____ % Minority	_____ %
6.9 % Women	_____ %

EEO Officer: \_\_\_\_\_

Tel: \_\_\_\_\_

8. Employment Data	a.) Total Employees		b.) Total Minority		c.) Count										d.) Total Hours of Employment		e.) Total Hours of Minority Employment		f.) Mn/DOT Trainees				g.)EDE Total Hours
					Black		Hispanic		Am.Ind. Alkn. Na.		Asian/ Pac. Is.		White						Minority		NonMinority		
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
Job Categories																							
Officials (Managers)																							
Supervisors																							
Foremen/Women																							
Clerical																							
Equipment Operators																							
Mechanics																							
Truck Drivers																							
Ironworkers																							
Carpenters																							
Cement Masons																							
Electricians																							
Pipefitters, Plumbers																							
Painters																							
Laborers																							
TOTALS																							

## 9. Names of Minorities and Women:

1. \_\_\_\_\_ 7. \_\_\_\_\_  
 2. \_\_\_\_\_ 8. \_\_\_\_\_  
 3. \_\_\_\_\_ 9. \_\_\_\_\_  
 4. \_\_\_\_\_ 10. \_\_\_\_\_  
 5. \_\_\_\_\_ 11. \_\_\_\_\_  
 6. \_\_\_\_\_ 12. \_\_\_\_\_

## 10. Names of Trainees:

1. \_\_\_\_\_  
 2. \_\_\_\_\_  
 3. \_\_\_\_\_  
 4. \_\_\_\_\_  
 5. \_\_\_\_\_  
 6. \_\_\_\_\_

## 11. Prepared by Contractor Designee:

(title) \_\_\_\_\_ (date) \_\_\_\_\_  
 (tel) \_\_\_\_\_

## 12. Reviewed by Project Engineer:

(Name) \_\_\_\_\_ (date) \_\_\_\_\_

**INSTRUCTIONS FOR EEO-13  
MONTHLY EMPLOYMENT COMPLIANCE REPORT**

1-5. Self-explanatory.

6. Percent of Completion is the estimated percentage of work completed including this reporting period.

7. Contract Goals are the percent of total project hours to be worked by minority and women employees. The goals are determined by the geographic location and source of funding for the project. Projects with State funding in excess of \$50,000 must meet the State Permanent Employment Goals. Projects with Federal funding in excess of \$10,000 must meet the Federal Employment Goals. (See chart on EEO Pages 15-18.) Minority and women employee hours shall be distributed evenly throughout the length of the project and in every trade and craft which performs works on the project.

% Obtained is the percent of the total project hours worked by minority and women employees, up to and including this reporting period.

Skilled and unskilled breakdown is required only for projects constructed in Anoka, Carver, Hennepin, Ramsey, Dakota and Washington counties.

8. Employment Data information will coincide with your certified payroll records.

A woman's employment hours may be counted only once. At the point of hire, the Contractor determines whether her hours will be assigned to the appropriate racial/ethnic category or to the Female category. Thereafter, her hours must be counted only in the selected category.

All professional, supervisory and managerial hours actually worked on the project site must be included, whether or not they appear on the certified payroll.

Clerical hours may be counted only if clerical staff has been assigned exclusively to this project. Usually this occurs when clerical staff is assigned to a field trailer. Clerical hours may not be prorated.

If a project takes place within more than one county and the county goals vary, the higher goals apply to the entire project.

8.a. Total Employees is a count of all employees who worked in the reporting month. Women employees can be counted only once, either in the Female category or in the appropriate racial/ethnic category.

8.b. Total Employment Hours is a count of all hours worked in the reporting month. A woman's hours can be counted only once, either in the Female category or the appropriate racial/ethnic category.

8.c. Mn/DOT Trainees lists the hours of employment for each person in Mn/DOT's Trainee (On-the Job Training) program.

8.d. Economically Disadvantaged Employee Hours lists hours of work performed by employees identified at time of hire as eligible under the program guidelines listed on EEO Page 25.

9. Names of Minorities and Women will enable the EEO Contract Management staff to readily identify these individuals on all projects.

10. Mn/DOT Trainee Names are the individuals on the Mn/DOT On The Job Training Program.

11. Prepared by the prime or subcontractor's EEO officer or designee..

12. Reviewed by the Mn/DOT Field Staff.

If you have questions about filling out this form, contact the Contract Compliance Specialist assigned to this project or the EEO Contract Management Office at (612) 297-1376.

# **CHAPTER VII**

## **49 CFR 23**

**NOTE: Page numbers are the same as found in the original document.**

# **PART 23—PARTICIPATION BY MINORITY BUSINESS ENTERPRISE IN DEPARTMENT OF TRANSPORTATION PROGRAMS**

## **Subpart A—General**

- Sec.
- 23.1 Purpose.
- 23.3 Applicability.
- 23.5 Definitions.
- 23.7 Discrimination prohibited.

## **Subpart B—[Reserved]**

## **Subpart C—Department of Transportation Financial Assistance Programs**

- 23.41 General.
- 23.43 General requirements for recipients.
- 23.45 Required MBE program components.
- 23.47 Counting MBE participation toward meeting MBE goals.
- 23.49 Maintenance of records and reports.
- 23.51 Certification of the eligibility of minority business enterprises.
- 23.53 Eligibility standards.
- 23.55 Appeals of denials of certification as an MBE.

## **Subpart D—Implementation of Section 105(f) of the Surface Transportation Assistance Act of 1982**

- 23.61 Purpose.
- 23.62 Definitions.
- 23.63 Applicability.
- 23.64 Submission of overall goals.
- 23.65 Content of justification.
- 23.66 Approval and disapproval of overall goals.
- 23.67 Special provision for transit vehicle manufacturers.
- 23.68 Compliance.
- 23.69 Challenge procedure.

## **APPENDIX A—SECTION-BY-SECTION ANALYSIS** **APPENDIX B—DETERMINATIONS OF BUSINESS SIZE**

## **APPENDIX C—GUIDANCE FOR MAKING DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE**

## **APPENDIX D—JUSTIFICATION FOR REQUESTS FOR APPROVAL OF OVERALL GOALS OF LESS THAN TEN PERCENT**

## **Subpart E—Compliance and Enforcement**

- 23.73 Complaints.
- 23.75 Compliance reviews of recipients.
- 23.81 Conciliation procedures for financial assistance programs.
- 23.83 Enforcement proceedings for financial assistance programs.
- 23.85 Emergency enforcement procedure.

23.87 Suspension and debarment: referral to the Department of Justice.

## **SCHEDULE A—INFORMATION FOR DETERMINING MINORITY BUSINESS ENTERPRISE ELIGIBILITY**

## **SCHEDULE B—INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY**

**AUTHORITY:** Sec. 905 of the Regulatory Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); sec. 30 of the Airport and Airway Development Act of 1970, as amended; sec. 520 of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987; sec. 19 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1615); sec. 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17); sec. 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223); Title 23 of the U.S. Code (relating to highways and traffic safety, particularly sec. 324 thereof); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); Executive Order 12265; Executive Order 12138.

**SOURCE:** 45 FR 21184, Mar. 31, 1980, unless otherwise noted.

## **Subpart A—General**

### **§ 23.1 Purpose.**

(a) The purpose of this part is to carry out the Department of Transportation's policy of supporting the fullest possible participation of firms owned and controlled by minorities and women, (MBEs) in Department of Transportation programs. This includes assisting MBEs throughout the life of contracts in which they participate.

(b) This part implements in part section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); section 30 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1730); section 19 of the Urban Mass Transportation Act of 1964, as amended (Pub. L. 95-599); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*); and Title 23 of the U.S. Code (relating to highways and highway safety). This regulation supersedes all DOT regulations issued previously under these authorities, insofar as

such regulations affect minority business enterprise matters in DOT financial assistance programs.

### § 23.2 Applicability.

This part applies to any DOT program through which funds are made available to members of the public for accomplishing DOT's purposes. Contracts and subcontracts which are to be performed entirely outside the United States, its possessions, Puerto Rico, and the North Mariana Islands, are exempted from this part.

### § 23.5 Definitions.

**"Affirmative action"** means taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve minority business enterprises fully in contracts and programs funded by the Department.

**"Applicant"** means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for DOT financial assistance; and **"application"** means such an application, request, or plan.

**"Compliance"** means the condition existing when a recipient or contractor has met and implemented the requirements of this part.

**"Contract"** means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this part, a lease is a contract.

**"Contractor"** means one who participates, through a contract or subcontract, in any program covered by this part, and includes lessees.

**"Department"** or **"DOT"** means the Department of Transportation, including its operating elements.

**"DOT-assisted contract"** means any contract or modification of a contract between a recipient and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification of a contract between a recipient and a lessee.

**"DOT financial assistance"** means financial aid provided by the Department or the United States Railroad

Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

**"Departmental element"** means the following parts of DOT:

(a) The Office of the Secretary (OST);

(b) The Federal Aviation Administration (FAA);

(c) The United States Coast Guard (USCG);

(d) The Federal Highway Administration (FHWA);

(e) The Federal Railroad Administration (FRA);

(f) The National Highway Traffic Safety Administration (NHTSA);

(g) The Urban Mass Transportation Administration (UMTA);

(h) The St. Lawrence Seaway Development Corporation (SLSDC); and

(i) The Research and Special Programs Administration (RSPA).

**"Joint venture"** means an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge.

**"Lessee"** means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

**"Minority"** means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(e) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.)

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

*"Minority business enterprise"* or *"MBE"* means a small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least 51 per centum owned by one or more minorities or women or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more minorities or women; and

(b) Whose management and daily business operations are controlled by one or more such individuals.

*"MBE coordinator"* means the official designated by the head of the Department element to have overall responsibility for promotion of minority business enterprise in his/her Departmental element.

*"Noncompliance"* means the condition existing when a recipient or contractor has failed to implement the requirements of this part.

*"Primary recipient"* is a recipient who receives DOT financial assistance and passes some or all of this assistance on to another recipient.

*"Program"* means any undertaking by a recipient to use DOT financial assistance, and includes the entire activity any part of which receives DOT financial assistance.

*"Recipient"* means any entity, public or private, to whom DOT financial as-

sistance is extended, directly or through another recipient for any program.

*"Secretary"* means the Secretary of transportation or any person whom he/she has designated to act for him/her.

*"Set-aside"* means a technique which limits consideration of bids or proposals to those submitted by MBEs.

[45 FR 21184, Mar. 31, 1980, as amended at 46 FR 60459, Dec. 10, 1981]

§ 23.7 Discrimination prohibited.

No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract covered by this part, on the grounds of race, color, national origin, or sex.

Subpart B—[Reserved]

Subpart C—Department of Transportation Financial Assistance Programs

§ 23.41 General.

(a) *Responsibilities of applicants and recipients.* (1) All applicants and recipients shall follow the requirements of § 23.43.

(2) Applicants and recipients in the following categories who will let DOT-assisted contracts shall implement an MBE program containing the elements set forth in § 23.45 (e) through (i). This program shall be submitted for approval to the DOT element concerned with the application for financial assistance or project approval.

(i) Applicants for funds in excess of \$250,000, exclusive of transit vehicle purchases, under sections, 3, 5, 9, 9A, 17 and 18 of the Urban Mass Transportation Act of 1964, as amended, and Federal-aid urban systems.

(ii) Applicants for planning funds in excess of \$100,000 under section 6, 8, 9 or 9A of the Urban Mass Transportation Act of 1964, as amended.

(iii) Applicants for Section 402 program funds of the National Highway Traffic Safety Administration:

(iv) Applicants for funds in excess of \$250,000 awarded by the Federal Avia-



tion Administration to general aviation airports:

(v) Applicants for funds in excess of \$400,000 awarded by the Federal Aviation Administration to non-hub airports; and

(vi) Applicants for planning funds in excess of \$75,000 awarded by the Federal Aviation Administration.

(vii) Licensees or applicants for a license under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*).

(3) All applicants and recipients in the following categories who will let DOT-assisted contracts shall implement an MBE program containing all the elements set forth in § 23.45. The program shall be submitted for approval to the DOT element concerned with the application for assistance or project approval.

(i) Applicants for Federal-aid highway program funds;

(ii) Applicants for funds in excess of \$500,000, exclusive of transit vehicle purchases, under sections 3, 5, 9, 9A, 17 and 18 of the Urban Mass Transportation Act of 1964, as amended, and Federal-aid urban systems;

(iii) Applicants for planning funds in excess of \$200,000 under section 6, 8, 9 and 9A of the Urban Mass Transportation Act of 1964, as amended.

(iv) Applicants for funds in excess of \$500,000 awarded by the Federal Aviation Administration to large, medium and small hub airports; and

(v) Applicants for financial assistance programs, including loan guarantees, by the Federal Railroad Administration and the U.S. Railway Association.

(b) *Approval requirement.* Applications and funding agreements are signed and authorizations to proceed are approved only after the applicant's MBE program has been approved by the Departmental element. This requirement applies to applications, authorizations to proceed requested by Federal-aid highway program recipients, and requests for draw downs from the U.S. Railway Association submitted 90 days or more following the effective date of this part.

(c) *Effect of agreement.* The MBE program prepared by the applicant and the commitment made by the applicant to carry out the MBE program

is incorporated into and becomes part of this agreement and subsequent financial assistance agreements. The agreement between the Department and the recipient shall contractually bind the recipient to the commitments made in the MBE program, as approved by the Department. Failure to keep these commitments shall be deemed noncompliance with this part. Once submitted and approved, an MBE program is applicable to all DOT-assisted contracts solicited and let by the applicant after the approval date of the MBE program regardless of the approval date of the grant or project under which the contracts are let.

(d) *Other MBE programs.* (1) Applicants meeting the criteria set forth in paragraphs (a)(2) and (3) of this section who have formulated MBE programs under previous requirements of DOT or other agencies shall revise these programs to conform to the requirements of this part prior to the approval of their next application.

(2) An MBE program approved by one Departmental element is acceptable to all Departmental elements. Applicants having an approved MBE program are not required to resubmit the program or to produce a new program for future applications, as long as all requirements for approval continue to be met and implementation of the program is achieving compliance. The Departmental element reassesses its approval of the MBE program of continuing recipients at least annually.

(e) *Transit vehicle manufacturers.* Transit vehicle manufacturers who wish to bid on UMTA-assisted transit vehicle procurement contracts shall have a UMTA-approved MBE program. Each UMTA recipient shall require these manufacturers to certify that they have such a program as a condition for bidding on UMTA-assisted contracts.

(f) *Exemptions.* The head of the Departmental element may, under appropriate circumstances, and with the concurrence of the Secretary, grant deviations or exemptions from this subpart. A request for deviation or exemption from this subpart shall be in writing and shall include a showing as to how the particular situation is ex-